IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 3768 of 2005

Date of decision: 30.11.2006

Ranjit Kaur

..... Petitioner.

Versus

Harbir Kaur

..... Respondent.

CORAM: HON'BLE MR. JUSTICE P.S. PATWALIA

Present:- Mr. A.P. Setia, Advocate
for the petitioner.

Mr. M.S. Uppal,Advocate
for the respondent no.1.

P.S. PATWALIA, J. (ORAL)

The present revision petition has been filed challenging order dated 07.04.2005 vide which learned Additional Civil Judge (Senior Division), Mansa has rejected an application filed by the petitioner-defendant in the suit for leading secondary evidence. The said application was rejected by the Trial Court primarily on the ground that the Court found that the petitioner had availed a number of adjournments for the last four years for producing her evidence. These adjournments included at least five last opportunities. Inspite of this she could not complete her evidence and it is only at that stage the application for leading secondary evidence was filed. Therefore the application was rejected and a final opportunity was granted to the petitioner-defendant to conclude entire evidence on 19.04.2005. Thereafter on 07.06.2005 the evidence of the defendant was closed by order as she had failed to produce any order from

this Court in any revision preferred by her allowing her adduce additional evidence.

Learned counsel for the petitioner contends that in fact the record which she wishes to produce is official record which should have been available in the office of DDPO, Mansa or DDPO Bathinda. The petitioner had made efforts to secure the record. However it is only on 02.11.2004 the Collector Mansa intimated the Trial Court by letter dated 02.11.2004 that file No. 33 dated 30.05.97 summoned by the Court, which, according to the petitioner, contained the aforesaid record was not traceable. When this fact came to the notice of the petitioner an application was immediately filed by her on 04.11.2004 seeking permission to lead secondary evidence to prove the aforesaid documents. Learned counsel submits that in these circumstances there has been no delay on the part of the petitioner. Rather she was trying to secure the documents from the concerned office. As soon as it came to her notice that the file containing the aforesaid document was not traceable, she filed an application seeking permission to prove the said document by way of secondary evidence. As against this learned counsel for the respondent- plaintiff in the suit has drawn my attention to certain averments made in para no.5 of the application filed by the petitioner to show that at least one of the document being a map was actually on the file of Civil Suit No. 37 of 27.01.86 decided on 08.12.92 by Sh. Gian Chand Garg, PCS, Sub Judge IInd Class, Mansa between the petitioner and one Harbhajan Singh. Still further he states that since the petitioner has failed to lead her evidence despite numerous opportunities the trial Court has rightly rejected the application filed by the petitioner seeking to lead secondary evidence.

After hearing learned counsel for the parties, I am of the opinion that in view of the letter dated 02.11.2004 written by the Collector, Mansa intimating the Court for the first time that the file in which the record sought to be produced by the petitioner was contained is not traceable, the petitioner cannot be held responsible for any delay caused in leading her evidence. I am also of the opinion that since the Collector, Mansa is himself saying that the file is not traceable the original is obviously lost and cannot be produced within reasonable time,the claim of the petitioner for leading secondary evidence is made out in terms of Section 65 of the Indian Evidence Act, 1872.

This revision petition is accordingly allowed. The order passed by the Trial Court dated 07.04.2005 declining the request of the petitioner for leading secondary evidence is set aside. The petitioner would be permitted to lead secondary evidence to prove the documents enumerated by her in her application filed before the Court.

As a consequence of the view that I have taken herein the order closing the evidence of the petitioner dated 07.06.2005 also cannot be sustained. The same is also set aside.

Learned counsel for the respondent-plaintiff submits that the suit has been pending since 1997. He states that the trial Court should be directed to decide the case expeditiously. Learned counsel for the petitioner has no objection to the same. The trial Court is directed to decide the suit expeditiously without granting any unnecessary adjournments to either party.

November 30, 2006 **(P.S. PATWALIA)**
dinesh **JUDGE**